

7/28/12

FILED

NOV 19 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

UNITED STATES OF AMERICA,)	Case No.: 3:11-CR-25
)	
Plaintiff,)	(BY SPECIAL APPEARANCE ONLY.)
)	Re: MOTION TO REPLACE COURT
vs.)	APPOINTED ATTORNEY and
)	APPOINTMENT OF SIXTH AMENDMENT
DAVID MINER,)	RIGHT OF ASSISTANCE OF COUNSEL.
)	
Defendant)	
)	
)	
)	

The Accused, David Miner, who is purportedly a defendant in the above captioned Matter, and by SPECIAL APPEARANCE ONLY, respectfully moves this court to take the following action:

1. The Attorney appointed by this court has placed herself in the position of Adversary and not counsel. Accused has had a number of exchanges (by phone, email and in person) that indicate incompatible differences, rendering Counsel as ineffective at properly defending Accused in the manner necessary to assure effective and competent assistance of counsel, as guaranteed by the Constitution for the United States of America.
2. This Notice has been prepared without the assistance of counsel, and is subject to whatever corrections are found necessary if and when appointed counsel so recommends.

Therefore, it is expected that this court will appoint the counsel arranged by the Accused, specifically Mr. Lowell Becraft of Huntsville, Alabama, who will provide meaningful and effective assistance of counsel to aid the Accused in correcting this document where appropriate,

and that said counsel will assist the Accused and protect the Accused's rights at each and every step of the proceedings, including at trial.

Assistance of Counsel

The attorney appointed by this court to represent the Accused, Mr. Kim Tollison, retired at the end of last year, 2011. Ms Laura Davis, from the same Public Defender's office, has taken over the defense in this case. Ms Davis has admitted more than once that she has never represented a client accused of violating any tax laws of these United States of America. Further, she has admitted that he has never represented a client accused of violating these particular tax laws. Still further, Ms Davis admits that she understands almost none of the more than 4,000 documents submitted by the government in the Initial Discovery. The Accused has offered a number of times to discuss the thousands of documents, even to the point of driving to Knoxville, TN at his own expense, but to no avail. The Accused has submitted to Ms Davis a number of documents explaining what he believes are the issues relevant to this case and to the tax laws, including but not limited to cases from the Supreme Court of the United States of America, as well as documents explaining the content of much of what has been received in Discovery, and Ms Davis appears to have read none of them in the almost 50 weeks she has represented the Accused. Finally, Ms Davis has refused to submit to this court any of the motions the Accused believes is essential to the proper defense against these specific charges contained in this specific indictment, so-called with the understanding that it took several months after the arrest where the Court and the Government were dealing with unauthorized and draft copies of the Indictment but with no lawful and properly prepared Indictment in the hands of the Court, and that the Accused has not so far seen a lawful Indictment with his name on it.

The Accused sincerely believes that this renders Ms Davis totally inadequate to defend the him in this particular case, especially considering the possible consequences of a loss of up to five years of his life spent in a federal prison and many thousands of dollars in fines. The Accused sincerely believes that Ms Davis cannot possibly render meaningful and effective assistance of counsel guaranteed by the Sixth Amendment to the Constitution of these United States of America. The Accused believes that the effective cooperation between his knowledge of the tax laws and Ms Davis' legal expertise in the courtroom is essential for the successful defense of this particular case, and this effective cooperation is lacking. Ms Davis' total lack of knowledge and experience with this type of criminal case has shown itself to be a clear threat to the possibility of a victory at trial.

Her knowledge of courtroom procedures and defense tactics seems to be excellent, but her lack of knowledge and experience in these issues presents a clear and present danger to the Accused. With her near total lack of understanding of the very documents the Government intends to use to put me in prison poses, at this late date, is clearly an impediment to any successful defense strategy. The Accused is convinced that he cannot get effective assistance of counsel as guaranteed by the Constitution for the United States of America with Ms. Davis in charge of his defense.

Moreover, Ms Davis' actions and words, as well as the lack thereof, places herself in an adversary and hostile position *vis a vis* the defendant. In several communications, it is common for Ms Davis to claim that all suggestions forwarded by the Accused will not be successful, but without any real explanation as to why. It seems that Ms Davis is hesitant to try anything outside her knowledge and experience as a defense in this case, and yet is free to suggest that all the typical tax case arguments with which she is familiar will lose in court.

With the prospective that my ideas won't work and other's ideas will lose, she has now become an adversary.

The Accused had a detailed discussion of "representation by counsel" versus "assistance of counsel" with Ms Davis shortly after she inherited this case, and she led the Accused to believe that she will control and direct the defense strategy regardless of any ideas and input from the Accused. The Accused made the claim early on in this relationship, and twice since then that "You cannot win this case without my help and I cannot win this case without your help." Ms Davis seemed to agree with that claim almost ten months ago. In all communications since then, however, it has become obvious that this understanding has no bearing on our relationship. Ms Davis is content to move forward without any assistance or input from the Accused on matters the Accused believes are very material. If Ms Davis actually believed my claim that we need to work together or we will lose the case, and then proceeds to prepare for trial without my input, the Accused is left with the concern that his attorney will not be able to present a proper and effective defense on his behalf. Accordingly, Accused now has no one to advise him in protecting himself.

It is expected that the Accused will have meaningful and effective assistance of counsel at each and every step of any and all proceedings in order that he will not be denied due process. (*Powell v. Alabama*, 287 U.S. 45, 69 (1932); *Argersinger v. Hamlin*, 407 U.S. 25, 28 (1972))

For all the foregoing reasons, the Accused respectfully requests that this court appoint new counsel to replace Ms Davis, said counsel being Mr. Lowell Becraft of Huntsville, Alabama, so that he may have meaningful and effective counsel to assist him at each and every step of any and all proceedings, and that he may have effective assistance in presenting this instant motion in order that it may be corrected, where appropriate, so that it may be more favorably considered.

Dated this 15th Day of November, 2012

A handwritten signature in black ink, appearing to read "David L. Miner", written over a horizontal line.

David L. Miner
478 East Altamonte Drive
Suite 108-530
Altamonte Springs, Florida
32701
615-301-1811

On November 15, 2012, I certify that a copy of the Defendant's Motion to Replace Federal Defender Appointed by the Court was served by U.S. Priority Mail with tracking, on the following attorney in charge for plaintiff, United States of America:

Frank M. Dale, Jr.
Assistant United States Attorney
Eastern District of Tennessee
800 Market Street, Suite 211
Knoxville, Tennessee 37902
Telephone: (865) 545-4167
Facsimile: (865) 545-4176

Executed this 15th Day of November, 2012



David L. Miner
478 East Altamonte Drive
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Altamonte Springs, Florida
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615-301-1811



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